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REVIEW OF PRIORITY THEMES

Action against corruption

Report of the Secretary-General

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INTRODUCTION

1. In pursuance of General Assembly resolution 49/157, the Commission on Crime Prevention and Criminal Justice at its fourth session considered the recommendations of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995. The Commission had before it a background paper prepared by the Secretariat on international action against corruption, which included the draft international code of conduct for public officials (A/CONF.169/14, annex I). The draft code had been prepared pursuant to the resolution entitled "Corruption in government" of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[1] held at Havana from 27 August-7 September 1990. The draft code was submitted to the Commission at its fourth session for its review and comments. The Commission was of the opinion that the draft code, when finalized, could constitute an important tool for the operational activities of the United Nations crime prevention and criminal justice programme, as well as for States wishing to include similar codes in measures to prevent and control corruption.[2]

2. On the recommendation of the Commission, the Economic and Social Council adopted resolution 1995/14, in which it requested the Secretary-General to continue his consultations with Governments to revise further the text of the draft international code of conduct for public office holders, annexed to that resolution, and to present it to the Commission at its fifth session.

3. Accordingly, the Secretary-General requested the views and comments of Governments on the draft code. Replies were received from 36 States.* A revised version of the draft international code of conduct for public office holders, which reflects the replies received, is annexed to the present report.

I. RECENT INTERNATIONAL INITIATIVES AGAINST CORRUPTION

4. The issue of corruption and its impact upon public service and government institutions has received dramatically increased attention at the international level. Action at the national level has been coupled by international efforts to promote a culture of good governance and strengthened institutions and to systematize legislative measures to prevent and control the spread of corrupt practices. Various international organizations have dealt with the matter, proposing action towards international cooperation in the fight against corruption. Some of the initiatives at the international level are described below.

5. The approach of the World Bank to corruption issues is coordinated by the Operations Policy Department. The Department is responsible for ensuring consistency in operational policy and processes of the World Bank and is also the central reference point for governance and public sector management.

6. The International Trade Centre (United Nations Conference on Trade and Development/General Agreement on Tariffs and Trade) issued in 1993 a guide on improving public procurement systems that included a chapter on measures to combat corruption. The guide highlighted the need to fight corruption as a means to improve financial accountability on the way towards good governance. The need for political support and preventive measures was considered of the utmost importance in combating corruption in public service.

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*Argentina, Australia, Austria, Belarus, Bolivia, Canada, Chile, China, Croatia, Cuba, Denmark, Egypt, Estonia, France, Germany, Holy See, Iran (Islamic Republic of), Iraq, Japan, Jordan, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Oman, Panama, Philippines, Qatar, Republic of Korea, Singapore, Slovakia, Spain, Turkey, United Kingdom of Great Britain and Northern Ireland and United States of America.

7. The Organisation for Economic Co-operation and Development (OECD) established in 1994 a working group on bribery in international business transactions. The main activities of the working group involved a review of steps taken by OECD member States to implement the recommendations of OECD on that topic and the accomplishment of an in-depth analysis of specific priority issues in connection with corruption such as making it a criminal offence, establishing accounting standards and abolishing tax deductibility of illicit payments in foreign countries. In Paris on 13 and 14 March 1995, OECD organized a Symposium on Corruption and Good Governance, which highlighted a number of issues, including procurement as an activity that might be subject to corruption and illicit payments being made to secure contracts funded by international aid. In connection with the decline of public confidence in government, OECD decided to conduct an inquiry into the management of ethics in selected OECD member States. As part of its programme of cooperation with central and eastern European countries, OECD has launched projects on expenditure management, administrative oversight, development of human resource management and regulatory reform. It plans to organize in 1996 seminars for public officials on means to combat money-laundering and corruption in the public service.

8. The Organization of American States organized a special conference, held at Caracas from 27 to 29 March 1996, to adopt an inter-American convention against corruption drafted by its working group on integrity and public ethics.

9. In the Council of Europe, a multidisciplinary group on corruption was established within the Directorate of Legal Affairs, under the responsibility of the European Committee on Crime Problems and the European Committee on Legal Co-operation, to examine what measures might be included in a programme of action at the international level against corruption. The terms of reference of the group had been drafted by the Committee of Ministers at a meeting held in 1994. The group held its first two meetings in 1995 and adopted a draft programme of action against corruption. In March 1996, the group held a meeting where the Programme of Action was finalized and a preliminary draft convention on corruption and a preliminary draft framework convention were examined. In addition to the proposed convention and framework, the priorities of the group include the study of the definition of corruption and of the feasibility of an international convention on civil remedies to fight corruption. A European code of conduct for civil servants will be the object of the group's work, together with a study on corruption of international civil servants and elected representatives, a study on the question of "laundering" of proceeds devised from corruption and the assessment of existing instruments of international cooperation against corruption.

10. The Inter-Parliamentary Union (IPU) held its ninety-fourth Inter-Parliamentary Conference at Bucharest in October 1995. The 565 representatives of the parliaments of 118 countries adopted, *inter alia*, a resolution on parliamentary action to fight corruption and the need for international cooperation in that field. In that resolution, the Inter-Parliamentary Conference, recalling the work of the United Nations, the Council of Europe, the Financial Action Task Force and OECD in that field, expressed its resolve to establish a working group to update the draft convention on measures to be taken in the international field against those guilty in the exercise of public office of fraudulent enrichment prejudicial to the public interest, adopted in 1962 by the fifty-first Inter-Parliamentary Conference, with a view to submitting the draft convention to the United Nations for consideration.

11. The European Bank for Reconstruction and Development has a mandate to foster transition towards open, market-oriented economies and to promote private and entrepreneurial initiatives in countries in central and eastern Europe. In doing so, the Bank seeks to ensure that the investment climate in countries in which it operates is not adversely affected by corrupt practices. In 1995, the office of the general counsel of the Bank finalized a paper on corrupt practices and money-laundering in the context of the operations of the Bank. The paper identified current rules, procedures and practices of the Bank to deter, detect and remedy problems related to corruption and money-laundering. The paper also noted the approach taken by other international financial institutions and described some of the recent initiatives at the international and regional

level to combat corrupt practices and money-laundering, summarizing the approach of the Bank to such problems and recommending improvements to its rules, procedures and practices.

II. COMMENTS BY STATES ON THE DRAFT INTERNATIONAL CODE OF CONDUCT FOR PUBLIC OFFICE HOLDERS

12. In accordance with Council resolution 1995/14, the Secretary-General continued his consultations with Governments to revise further the text of the draft international code of conduct for public office holders. An analysis of the replies is provided below. Some of the replies cover the general framework of the draft code, while others concern both the structure and some or all of its articles.* For the sake of uniformity and ease of reference, the present analysis was prepared referring to the original text of the draft code as it appears in the annex to Council resolution 1995/14, reflecting the comments received under each article. A revised version of the draft code, which reflects the comments made by States, is contained in the annex to the present report.

13. Eighteen States expressed a positive attitude towards the principles underlying the draft code, considering it a more comprehensive text that contained improvements regarding legal terminology. Some States held the view that, once adopted, it would have a positive effect on combating corruption and fostering integrity in public institutions. Some States included copies of their national legislation on corruption, which confirmed that the draft code embodied legal principles already existing in several legal settings. In the view of one State, the code might not be sufficient in itself to prevent corruption if pre-emptive administrative measures, including fair and proper recruitment procedures, education and in-service training for public officials and proper remuneration, were not part and parcel of a broader international action plan for a more effective strategy. Another State viewed the drafting of such a code as a desirable and educative tool that might be helpful in encouraging States to consider developing and/or improving their own codes.

Section I. General principles

14. Fourteen States provided comments on section I of the draft code.

15. With regard to article 1 of the draft code, the main comments referred to the formulation of "public office holders". One State (Japan) proposed that the wording "public officials" should be used or, alternatively, that its interpretation should rest with each country; another State (Canada) proposed (a) adopting two definitions for "public office holders" and for "public office", the former to include politicians as well, and (b) retaining the wording "public office holders". Comments were made by three other States (China, Germany and the United Kingdom) on the second part of article 1. It was proposed that any reference to the system of government and the part that specified governmental offices should be deleted, since civil servants owed loyalty to the duly constituted government only and not to branches of it or to other manifestation of public interest. Because of the deleterious effects of corruption of foreign entities or persons on political and economic stability, one State (the United States) suggested that the code of conduct should make it explicit that domestic and foreign persons and entities should not command the loyalty of public officials. Finally, it was suggested by one State (Spain) that the definition of "public office" should be strengthened by proposing that a reference be made to universal ethical principles and laws and to the duty to demonstrate absolute devotion when acting on behalf of government. Another State (Canada) proposed replacing the word "primary" with "ultimate", as the former would seem to reduce the accountability of public officials to their superiors.

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*In addition to providing substantive comments, China, Jordan, Qatar and Spain provided suggestions on ways to improve the translation of the international draft code into Arabic, Chinese and Spanish.

16. Most of the comments concerning article 2 and article 2 *bis*, which had been placed in brackets, were related to the rights and obligations of public office holders and to their duty to execute, or to refuse the execution of, orders that did not conform with the law. Regarding article 2, it was suggested (by Canada and the Holy See) that the code of conduct should promote the duties of diligence, responsibility, efficiency and honesty for public officials and the need for impartiality and efficiency on the part of the public administration. Some States proposed the deletion of article 2 *bis*, considering it too detailed to be of universal application, particularly in view of its reference to the issue of carrying out an order against the law. Those States felt that that matter should not be dealt with by international standards but should be left to national legislation. Other States indicated their readiness to accept article 2 *bis*, provided that its formulation was changed to introduce safeguards for the public office holders who were obliged to obey such orders. Such safeguards could refer to the reiteration of the order in writing. Nevertheless, some of those States made clear that the order should not be executed if it constituted a criminal offence.

17. Article 3 contained a reference to the issue of the abuse of power. Some States felt the need for a new article or at least more specific language dealing with the subject. However, no suggestions were provided. Other States focused their comments on the principle of equality before the law as the legal support of the provisions of article 3. In the view of one State (the Holy See), article 3 could be reinforced by including the obligation to admit every citizen, without discrimination, to public services, the prohibition of any preferential treatment and the obligation to exclude public officials from decisions on matters in which they were personally involved or had any interest. The promotion of affirmative action policies was seen as relevant by one State (Canada); it proposed removing the square brackets from the last sentence of article 3.

Section II. Conflicts of interest and disqualification

18. Eighteen States provided their comments on section II of the draft code. Three of the States that provided their views on article 4 (China, the United Kingdom and the United States) felt that it was discriminating to prohibit public office holders from advancing interests when those interests were of a legitimate nature or the result of a government policy. In order to avoid an overly broad statement, one State (the United States) proposed that "never in any way" should be changed to "not" and that the phrase "personal or" should be deleted. Two other States (Australia and the Holy See), however, suggested that that provision should be reinforced by asking public office holders to refrain from any action that could be seen to be incompatible with their office and by declaring if the use of their authority could represent a benefit for their political party or group. One State (France) indicated that the provision was in line with its national legislation and another (Croatia) suggested that similar provisions should be further strengthened for police officers. One State (Spain) proposed retaining the word "improper", which had been deleted in the original text, with reference to the advancement of interests of public office holders, as the deletion could have an effect opposite to the one sought.

19. The comments provided on article 5 were mainly aimed at reinforcing transparency, and therefore democracy, within public administration. Two States (Argentina and Mexico) felt that it was advisable to remove the possibility of exemption from the obligation to declare the public office holder's private interests in a matter pertaining to the duty of office. According to those States, the information available on the individual concerned should be open to public scrutiny as, in their view, the present formulation could be misleading since it seemed to imply a discretionary power for the public official concerned. Two other States (France and Germany) suggested that it might be forbidden for public officials to exercise any other function, with the exception of intellectual, artistic and, in some cases, academic activities, or that, in situations of possible conflict of interest, public office holders should request their hierarchical superior to exclude them from the decision-making process. Three States (Turkey, the United Kingdom and the United States) also suggested that article 5 should be either redrafted or combined with article 8, as both would impinge on the principle of protection of privacy. One of those States (the United States) suggested that, should that be the case, only the third sentence of article 5 should be retained, so that it would read: "In situations of possible or perceived conflict of interest between public office holders' public duties and private interests, they shall,

if possible, disqualify themselves from any decision-making process involving such conflict of interest." Finally, one State (Canada) argued that politicians should not be prevented from having outside interests and from being active participants in the community, as that participation was essential to the health of a parliamentary democracy.

20. Two comments were received on article 6. The States (Canada and the United Kingdom) suggested that the present wording was overly broad and appeared to include information that might be public knowledge. An amendment was proposed that would read "... use public property and services, or misuse information". The adoption of a new paragraph that should address the use of information, distinct from the use of services and properties, was also suggested by one of the States (Canada).

21. The comments received on article 7 referred to two issues contained therein. First of all, three States (Canada, Oman and Spain) expressed the opinion that the period after separation from public service referred to in the first line should be specified. Those States indicated that one and two years, respectively, should be the minimum time required to lapse between the end of public service and the acceptance of employment or consultancy assignments in a firm that was in financial relationship with the public office holder's prior governmental department or agency. Two States (Argentina and the United States) were concerned that that provision would lead to the unfair exclusion of the public office holder from the labour market and suggested instituting a requirement for governmental permission only where a direct relationship existed between the nature of the service that had been left and the activity to be taken up. One State (France) noted that its criminal code was in line with that provision and that an authorization had to be requested by the public office holder before accepting any such assignment. Under its legislation, an ad hoc administrative commission had been established to deal with such cases, the deliberations of which, however, were not binding for the court if the criminal code had been violated. One State (Mexico) suggested replacing the wording "position of defined responsibility" with "managerial positions" and proposed two new articles to prevent public office holders from expressly abusing their position by intervening in decisions pertaining to matters in which they might have a personal interest. The same State also suggested specifying the non-compatibility of posts and working hours. The need for specific policies to be observed was expressed by one State (Canada), which, in proposing an alternative formulation for article 7, suggested that States should have in place post-employment compliance measures designed to reduce to a minimum, without unduly restricting former employees in seeking employment, the possibility of conflict of interest, preferential treatment or unfair advantage.

Section III. Disclosure of assets

22. Comments on article 8 were provided by 16 States. Some of the States supported article 8 and mentioned that their national legislation included similar provisions. Amendments were suggested that would specify the periodicity of the disclosure, a minimum threshold below which reporting would not be required, and the party to whom the information should be disclosed. Other States, whose legislation did not foresee such a provision, were concerned about the fact that the disclosure might be perceived as an unwarranted intrusion of privacy. Along those lines, it was suggested that the requirement should be limited to sensitive areas of public service or to cases where an abuse of power might be suspected and that the last sentence should be revised to read: "All information provided shall be treated as confidential but may be disclosed at a country's discretion within the framework of special procedures." The deletions indicated in the original text of the draft code were considered desirable by one State (Spain). Another (Canada) proposed reformulating the article and placing it under section II, which dealt with measures concerning conflicts of interest.

Section IV. Acceptance of gifts or other favours

23. There were two formulations for article 9 of the draft code. Ten of the 16 States that provided the comments on article 9 suggested adopting the wording that had been placed in brackets, adding that it was

more concrete and mandatory and was not permissive in character. The first formulation for article 9 was said to allow too much discretion to public office holders in deciding which gifts could or could not be accepted. Two States (Oman and Spain) proposed adopting a text similar to the formulation placed in brackets, while another (the United States) proposed adding a clause that would permit Governments to authorize the acceptance of gifts if the refusal would cause offence or embarrassment. One State (the Islamic Republic of Iran) suggested that, if in the first formulation the word "shall" would be replaced with "must", there would be no need to adopt the second, bracketed formulation. Two States (Denmark and Malaysia) attached their national legislation. In one of them the acceptance of gifts or other favours of any monetary value was considered a criminal offence if given to expedite a transaction. The other contained legal provisions that were in line with the second formulation. One State (Canada) was of the opinion that neither formulation of article 9 dealt with the important issue of apparent conflict of interest; it suggested an alternative formulation for consideration, according to which public officials should not solicit or accept any gifts or benefits when such gifts or benefits could influence, or reasonably be perceived to influence, the exercise of their functions, their judgement or the performance of their duties.

Section V. Confidential information

24. Six States commented on article 10. States suggested reinforcing the provisions contained in article 10 by extending their scope to cover all the information of which public office holders might be aware of by reason of their office or post and not only that of a confidential nature. One State (the United Kingdom) argued that the "needs of justice" could not imply that any disclosure was proper on the basis of an individual's own assessment of those needs. Another (the United States) remarked that, in some countries, only disclosure of certain types of information that were considered sensitive was prohibited; it suggested that the extent of confidentiality should be left to the discretion of national legislation. The national legislation attached by one State (Malaysia) contained provisions according to which the disclosure of confidential information by public office holders was considered a criminal offence. It was also suggested by one State (the Islamic Republic of Iran) that the provisions of article 10 might be strengthened by adding the phrase "and the public office holders are responsible to observe this matter" at the end of the paragraph.

Section VI. Political activity

25. The five States that provided comments on article 11 suggested changes or a new formulation that would strengthen its provisions by expanding the range of political activities or acts which were incompatible with the tenure of a public office or which might impair public confidence in public administration. One State (Canada) felt that if politicians were included in the definition of "public office holders", article 10 should be sensitive to that fact, as politicians were naturally going to be involved in political activity.

Section VII. Reporting, disciplinary action and implementation

26. During the fourth session of the Commission, there was extensive debate on article 12. It was considered appropriate to place it in brackets in order to allow for further input from Governments. Eight of the 19 States that provided comments on section VII of the draft code proposed deleting article 12, as it might raise problems owing to the principle of expediency that prevailed in certain States. One State (Spain) also proposed a text that would permit the control aimed at by the provision of article 12, avoiding impunity and encouraging reporting. One State (France) favoured retaining article 12.

27. Alternative formulation 1, which would replace articles 13 and 14 with a single article, was seen as being more general. The vast majority of the States that commented on this issue preferred it. Some States, however, felt that adjustments could be made to this part of the draft code. One State (Germany) proposed adopting alternative formulation 1 to replace article 13 and deleting article 14 to give reasonable legislative discretion on the matter to each country. Two States (the Islamic Republic of Iran and the Republic of Korea) suggested adopting alternative formulation 1 for the whole section; one of the States also proposed

deleting the word "reporting" from the title of section VII. One State (Argentina) suggested the adoption of alternative formulation 1 but, at the same time, felt that a protective clause on the need to compensate third parties injured as a result of a violation should be included. One State (the United Kingdom) proposed adopting alternative formulation 2, provided that the code specified breaches of rules of conduct under the terms and conditions of service. One State (China) felt that there was a need to discuss articles 13 and 14 further. One State (Canada) suggested that reliance on criminal law and other sanctions were not necessarily the best means of promoting integrity within government in association with a code of conduct and that the use of education and consultation were also important and deserved to be emphasized.

III. ACTION REQUIRED OF THE COMMISSION

28. At its fourth session, the Commission in principle supported the draft international code of conduct for public officials. That support was reiterated by the majority of States that responded to the Secretary-General's request for comments. In providing their comments, States made many substantive suggestions to improve the draft code. Many offered additional information and legislative texts that demonstrated the timeliness and usefulness of the draft code. Strengthening international action against corruption and improving the provision of practical assistance in this area to requesting States will require practical high-quality tools that are of relevance to the efforts of States at the national level. In view of the above, the Commission may wish to adopt the draft code of conduct for public officials, encouraging States to be guided by its provisions in their efforts to prevent and control corruption and promote accountability and transparency.

29. Taking into account the discussions at its third and fourth session, and the results of the plenary meeting on corruption held at the Ninth Congress, the Commission may wish to direct attention to the modalities of increasing technical assistance activities of the Crime Prevention and Criminal Justice Division in the area of the prevention and control of corruption. The Commission may wish to consider, while adopting the draft code of conduct, the elaboration of a structured international plan of action against corruption, which might include guidelines for action by the United Nations on good governance and prevention and control of corrupt practices in public institutions and private business.

30. The Commission may wish to request the Secretary-General to request Member States to provide national legislation and regulatory measures on the prevention and control of corruption. On the basis of such a collection of legislation and other information provided by Member States, the Commission may wish to consider the advisability of requesting the Secretary-General to prepare model legislative and regulatory measures against corruption, together with compilations of best practices in preventing, detecting and controlling corrupt activities. Such tools, revised to suit the local legal system and local practice, could be used at the regional and national levels and could form the basis for joint activities with other relevant international organizations.

Notes

[1] *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.7.

[2] *Official Records of the Economic and Social Council, 1995, Supplement No. 10* (E/1995/30), para. 69.

Annex

REVISED DRAFT INTERNATIONAL CODE OF CONDUCT FOR PUBLIC OFFICIALS*

I. GENERAL PRINCIPLES

1. A public office, as defined by national law, is a position of trust, implying a duty to act in the public interest. Therefore, the primary [ultimate] loyalty of public officials shall be to the public interests of their country as expressed through the [democratic] institutions of government, and not to [national or foreign] persons, political parties [or entities] [or specific government departments or agencies].

2. Public officials shall ensure that they perform their [duties and] functions efficiently [, diligently, honestly, responsibly] and effectively [and with integrity]. They shall at all times seek to ensure that public resources for which they are responsible are administered in the most effective and efficient manner.

3. Public officials shall be attentive, fair and impartial in the performance of their functions and, in particular, in their relations with the public. They shall at no time afford any undue preferential treatment to any group or individual, or discriminate against any group or individual, or otherwise abuse the power and authority vested in them. [This provision should not be interpreted as excluding any officially approved affirmative action policies to assist disadvantaged groups.]

II. CONFLICTS OF INTEREST AND DISQUALIFICATION

4. Public officials shall never in any way [not] use their official authority for the [improper] advancement of their own or their family's [illegitimate] personal or financial interest. They shall not engage in any transaction, acquire any position or function, or have any financial, commercial or other comparable interest that is incompatible with their office, functions and duties, or the discharge thereof.

5. All public officials designated under national law shall, unless exempted, declare relevant business, commercial and financial interests, or activities undertaken for financial gain upon entering the service. This information shall be updated regularly. In situations of possible or perceived conflict of interest between public officials' public duties and private interests, they shall disqualify themselves from any decision-making process relating to such conflict of interest.

6. Public officials shall at no time use public property, services, or [misuse] information acquired in the performance of, or as a result of, their official duties for activities not related to their official work.

7. Within [a] [the] stated period [of one/two years] after separation from public service, public officials holding managerial positions shall, within the framework of national law, obtain governmental permission prior to accepting employment or consultancy assignments from business or private concerns that are in [direct] financial relationship with the governmental department or agency in which such officials were employed. During the same period after separation, such permission shall also be required prior to engaging in any private or business activity [directly] related to, or dependent on, their previous position in public service.

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*Underlining indicates a change introduced on the basis of comments received. Words in square brackets indicate new or alternative formulations proposed by States.

III. DISCLOSURE OF ASSETS

8. Public officials holding managerial or policy-making positions as designated by and pursuant to procedures established by national law, shall disclose [to an identified authority and within a specified period of time] all personal property, assets and liabilities, as well as those of their spouses and/or other dependants [which exceed a stated minimum value]. Such officials shall also provide detailed information on the source of any property or asset acquired after their appointment to a senior post. All information provided shall be treated as confidential [and may only be disclosed within the framework of special procedures] [but may be disclosed at a country's discretion within the framework of special procedures].

IV. ACCEPTANCE OF GIFTS OR OTHER FAVOURS

9. Public officials must, as a matter of principle, refuse any gift which may have an influence on the exercise of their functions, performance of their duties or their judgement.

V. CONFIDENTIAL INFORMATION

10. Matters of a confidential nature in the possession of public officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise. Such restrictions shall apply also after separation from service.

VI. POLITICAL ACTIVITY

11. The political activity of public officials shall not be such as to impair public confidence in the impartial performance of their functions and duties.

VII. REPORTING, DISCIPLINARY ACTION AND IMPLEMENTATION

12. Public officials who violate the provisions of this Code shall be subject to the appropriate disciplinary, administrative or penal measures. as determined by national legal principles and procedures.